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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

19 CR 328 (JSR)

5 MARIO AMILCAR ESTRADA
6 ORELLANA,

7 Defendant.

BAIL APPLICATION

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8 New York, N.Y.
9 July 17, 2019
10 3:10 p.m.

11 Before:

12 HON. JED S. RAKOFF,

13 District Judge

14 APPEARANCES

15
16 GEOFFREY S. BERMAN,
17 United States Attorney for the
18 Southern District of New York
19 JASON A. RICHMAN
20 Assistant United States Attorney

21 ROBERT A. FEITEL
22 Attorney for Defendant

23 ALSO PRESENT: ERIKA de los RIOS, Interpreter (Spanish)
24 SELMA MARKS, Interpreter (Spanish)
25 MARLON OVALLES, Pretrial Services
ANDRES SUAREZ, Paralegal

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1 (Case called)

2 MR. RICHMAN: Your Honor, good afternoon.

3 Jason Richman, for the government.

4 With me at counsel table is Marlon Ovalles from the
5 United States Pretrial Services Office.

6 THE COURT: Good afternoon.

7 MR. FEITEL: Good morning, your Honor.

8 Robert Feitel, for --

9 THE COURT: I don't think it's morning, but --

10 MR. FEITEL: I apologize. It's been a long day. I
11 should say good evening.

12 Good afternoon. Robert Feitel, for Mr. Mario Estrada.
13 The defendant is present. I believe he can understand the
14 proceedings via the translation and the interpreter in the
15 courtroom.

16 And also with me is my full-time paralegal, Mr. Andres
17 Suarez. The government has no objection to him being at
18 counsel table.

19 THE COURT: Very good. Please be seated.

20 So we're here on the motion for pretrial release.

21 Before we hear argument, there was one allegation that
22 I thought might bear on this determination, which was the
23 defendant attempted to have his rivals assassinated. That was
24 not part of the charge itself. So I ask the government for
25 what evidence there was of that.

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1 MR. RICHMAN: Thank you, Judge.

2 Yes, your Honor. We have two transcripts marked as
3 Government Exhibit 1 and Government Exhibit 2. Government
4 Exhibit 1 is a snippet of a February 8th, 2019 conversation;
5 Government Exhibit 2 is a snippet from February 27th, 2019.
6 These are the two conversations. And we have shared them with
7 defense counsel and understand defense counsel agrees with the
8 transcription and translations. These are the two central
9 conversations involving this defendant and the assassination
10 plot.

11 THE COURT: All right.

12 MR. RICHMAN: Defense counsel, I understand, will
13 speak to and I'll front for the Court now, there were other
14 conversations with the codefendant, with Mr. Gonzalez, which
15 were more in-depth. And I think defense counsel, like I said,
16 wants to address those. And I'm happy to pass these two
17 transcripts up.

18 THE COURT: Please.

19 MR. RICHMAN: Thank you, your Honor.

20 THE COURT: All right. So, let's see, this is a --
21 I'm looking at Government Exhibit 1, which is a conversation
22 between Mr. Gonzalez and a cooperating or informing person here
23 designated as CS2.

24 (Pause)

25 THE COURT: The third party to the conversation is

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1 Mario Estrada.

2 And the CS2 says: There's one thing that is
3 important, Señor Estrada. Are there any candidates that are
4 bothering you?

5 Mr. Estrada says: That's exactly what I was going to
6 tell you as well.

7 CS2 says: It's \$15 million for you to win, right?
8 What are we going to do with them? Are we going to need to get
9 them out of the way? The jobs were very well done, right?

10 Mr. Estrada says: Listen, I'm going to tell you one
11 thing.

12 And CS2 says: If tomorrow -- I'm going to tell you
13 one thing. Tomorrow a candidate is going to go out for a
14 stupid thing for other problems that I don't know about and
15 starts messing with you with that thing, they are going to have
16 a problem.

17 Mr. Estrada says: Yes, yes.

18 Then Mr. Estrada says: We need to go for a friend of
19 Thelma.

20 CS2: Who?

21 Mario Estrada says: Thelma. Thelma.

22 CS2 says: Okay.

23 Mario Estrada says: She is the only one.

24 Mr. Gonzalez says: So we can talk about things as
25 they are, yes? Thelma is a problem.

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1 And skipping ahead a little bit, CS2 then says: We
2 have no problem. We can vanish this lady, Thelma.

3 Mr. Estrada says: Yes, well, the lady I can win
4 against, I know I can win.

5 CS2 says: But it's a risk, right?

6 Mr. Estrada says: The issue that she's meeting with
7 everyone.

8 CS1 says: She's organizing everything.

9 Mr. Estrada says: She's messing with everyone.

10 CS1 says: In fact, all these things that are
11 happening to everyone are because of her.

12 Mr. Estrada says: Yes, because she has two attorneys
13 who are dumb and obey her.

14 And then there's further conversations.

15 CS2 says: No, it's not going to be like that. The
16 strategy is not like that. How much time do we have before we
17 can hit that bitch?

18 Mr. Estrada says: Now!

19 Mr. Gonzalez says: Because right now would be ideal.

20 CS2 says: All right. That's fine. Her and I need
21 the name of those two bastards right away so I can start
22 looking.

23 And then there's exchange of names.

24 So that's the first exhibit.

25 The second exhibit, CS2 says: When Juan Pablo came

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1 that time when we spoke when I was in Guatemala, we spoke about
2 fucking some people up, right? Those candidates, Thelma, the
3 candidate, fuck up those *huecos*, the two prosecutors, and
4 *galihos*. I have the people ready over here. I'm paying for a
5 hotel, I'm paying for expenses. You're telling me Mario is to
6 decide that. Are we going to continue with that? What are we
7 going to do with that?

8 Mr. Estrada says: No, not anymore. Listen up. They
9 are going to fuck up Thelma any minute. She's not going to be
10 able to participate. I'm going to show it to you, the notice
11 here also, and give her a participation.

12 All right. There's some more, but let me ask the
13 government, so what is your interpretation of those
14 conversations?

15 MR. RICHMAN: Sure, your Honor. Thank you.

16 So our interpretation of these two conversations and
17 the conversations with the codefendant were that the
18 codefendant proposed to the sources who were posing as
19 representatives and associates of the Sinaloa Cartel, that they
20 contract to assassinate -- the reference to Thelma, we believe,
21 is the Thelma Aldana, who was a candidate for the presidential
22 election in Guatemala.

23 On the February 8th conversation, your Honor, that's
24 when Ms. Aldana's name is provided. There was a previous
25 conversation on February 7th with Mr. Gonzalez, the

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1 codefendant, in which this was discussed and in which they also
2 discussed in more detail what Mr. Gonzalez and, per his
3 representation, Mr. Estrada wanted to do.

4 And the government doesn't quarrel with the
5 interpretation of the February 27th meeting, that at that point
6 Mr. Estrada said to the Sinaloa Cartel representative, No more.
7 I don't think we need to do this anymore. The language used is
8 it would follow you around, it would be bad, and we don't have
9 to do it. And that's actually corroborated by the fact that --
10 and I don't want to get too deep into the geopolitical waters,
11 but my understanding from public source reporting is that
12 Ms. Aldana has actually denied participation in the election,
13 and she was not on the ballot for the first election which was
14 in June.

15 So that comports with what he is saying in terms of we
16 don't need to go forward, and that is our interpretation, that
17 on February 8th, raring to go, ready for Ms. Aldana. And the
18 two names, your Honor, the two male names, I understand, are
19 two attorneys that worked with or for her. And by February
20 27th, the defendant had decided, You know what? I've changed
21 my mind. We don't need to do that.

22 THE COURT: All right. So that's very helpful.

23 So now let me hear not just on that issue, but on all
24 issues that defense counsel wishes to raise from defense
25 counsel.

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MR. FEITEL: Good afternoon, your Honor.

I'd like to start by trying to provide some explanation for the excerpts of the transcripts that have been provided to your Honor.

My analysis is that, in total, there were about 12 meetings between the various codefendants and the undercovers. The materials provided to your Honor in support of the claim about the assassinations, I think, comprise fairly less than two minutes of conversation; although, on their face, I think they are problematic from the point of view of the defendants. I want to try to provide context for them.

The day before the first meeting, which is the first tape that your Honor has, which is February 8th, there's a meeting on February 7th between the codefendant and the undercovers. And I've spoken to Mr. Richman about this.

I have a DEA report that was provided to me. He ask that I not make them part of the public record, but instead I read from the relevant portion because he'd like to protect the continuity in this proceeding investigation.

But on February 7th, when it's just Mr. Juan Pablo Gonzalez, the codefendant, alone with one of the undercovers, the report says: When CS1 asked Gonzalez how else the cartel could help the campaign, Gonzalez asked if CS1's cartel could assassinate several persons who could become a problem for their campaign in the near future. And then Mr. Gonzalez

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1 identified some targets. So the initial idea of this doesn't
2 come from Mr. Estrada, it comes from Mr. Gonzalez.

3 I've read carefully and I've also listened to the tape
4 of the February 8th conversation. And I think there's sort of
5 a disconnect when people are speaking to each other in this
6 conversation.

7 On page 4 of the transcript of the February 8th
8 meeting, the undercover identified as CS2 says: Then we have
9 no problem. We can vanish this lady, Thelma.

10 And Mr. Estrada's response is: Yes, well, of the lady
11 I can win against. I know I can win.

12 What I believe that Mr. Estrada is talking about is
13 that he can prevail against her or, as later becomes clear, she
14 is not going to be a candidate for the job. And I know that on
15 page 5 there's the part your Honor read where my client says
16 "now" in response to when we can hit that person. I've
17 listened to the phone call, I've listened to the tape of it,
18 your Honor. It's people talking all over each other. It says
19 absolutely what Mr. Richman's transcript says, there's no doubt
20 about it. But in context it's not entirely clear that it's
21 responsive to anything like that.

22 And the same thing happens again. Mr. Gonzalez seems
23 to be the person moving on about the idea of killing these
24 people. There's a conversation that's memorialized in the DEA
25 report of a meeting on February 14th with Mr. Gonzalez and the

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1 informants. In that meeting, Mr. Gonzalez was asked about his
2 timeline for the assassinations, to which Mr. Gonzalez advised
3 25 days, and added that the assassinations needed to be done
4 quickly as to not raise too much suspicion.

5 Mr. Gonzalez goes on to say that he would be providing
6 the necessary equipment to perform the assassinations, which he
7 replied, Yes, I can get you AK-47s; they are easy to get. And
8 Mr. Gonzalez later says he can not only get the AK-47 automatic
9 weapons, he can get some pistols and provide a hotel room and
10 false identification.

11 The next conversation that the government focused on
12 is the one that takes place on a yacht. And it's designated
13 here as Government's Exhibit 2.

14 I have a report that was prepared, and I spoke to
15 Mr. Richman about it. It's a report of the exact same day's
16 meeting. And in this report it says: CS1 then inquires -- and
17 it's a reference to Mr. Estrada -- about the killings that
18 they, CS1, CS2, Estrada, and Gonzalez, had spoken about in
19 previous meeting. And further, that his/her people have begun
20 their homework.

21 Mr. Estrada replied that that was Gonzalez's idea;
22 that that stuff will follow you forever, bad karma; and the CS
23 then no longer discussed the subject. That's in a report that
24 I have; it's not part of the materials provided to your Honor.

25 So I said to Mr. Richman, Do you know if this

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1 conversation took place before or after the snippet that
2 constitutes -- it's designated N8. So I don't know if this
3 takes place before that or after that.

4 But what happens in these undercover cases is these
5 undercovers are fabulously well-prepared. These people are the
6 most Machiavellian actors that you can possibly imagine. And
7 if this conversation takes place first, what happens thereafter
8 in the government's recording, N8, is they keep going back to
9 the issue; that is, Mr. Estrada says, I don't want to do it.
10 That was Gonzalez's idea. And they keep coming back, Well,
11 what do you say? You're the one who has to make the decision.

12 And when your Honor reviewed the version of N8, and
13 was reading from it out loud, I don't know if your Honor got to
14 the page that's designated page 3. Mr. Estrada does say, as
15 they are asking him about this, the final comment is: I
16 personally think that it won't be worth it right now. It's
17 better not to stir things up, because right now you don't know
18 why you will stir things up for, and you're going to get
19 involved in -- and then there's some expletives, and it says:
20 It's not worth it.

21 I think that, on balance, this issue was raised, I
22 think it would be hard to say -- I try not to argue contrary to
23 what the actual facts look like. I think these issues were
24 raised -- I think my client made it pretty clear that this was
25 not something he had originated, not something that he wanted

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1 to do, and not something that he was in favor of doing.

2 It's always easy to compare how terrible it could be
3 for your client under other circumstances. But my client's not
4 the one talking about the guns, he's not talking about
5 providing pistols or helping the people do it.

6 During the course of this conspiracy that's charged,
7 there is a lot of discord among Mr. Juan Pablo Gonzalez and
8 Mr. Estrada. It's behind the scenes; it manifests itself in
9 some of these conversations.

10 So I do think that, on balance, my client negated any
11 effort by anyone to commit this violence. And if my timing
12 sequence is correct, even if he says, Look, that's not my
13 thing, the government keeps coming back at him.

14 So with that in mind, I do not -- if your Honor wanted
15 to hear briefly about the conditions of release and how we
16 think this plays out or if your Honor wants to hear back from
17 the government, I'll be --

18 THE COURT: All right. Let's quickly hear from the
19 government just to this point, and then we'll turn to the
20 conditions of release.

21 MR. RICHMAN: Thank you, your Honor.

22 I don't quarrel with much of what defense counsel
23 said. I think we embrace most of those facts. And what those
24 facts boil down to for the government are that the defendant
25 and his codefendant engaged in at some point certain

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1 conversations with confidential sources about the assassination
2 of rivals. This is certainly not the heart of the case; it's
3 also not the heart of why we submit detention is appropriate
4 here.

5 But, for example, in N8 and Government Exhibit 2, the
6 defendant's response to CS2 saying: Those candidates, Thelma,
7 is, No, not anymore. It's not, No, oh, my God, this is
8 horrible. I would never do such a thing. That was my
9 codefendant; that was Mr. Gonzalez. I don't know what you're
10 talking about. Please stop.

11 In the first conversation, when it was brought up, the
12 defendant again was not like, Hey, this is horrible. I'm
13 running for president. What are we talking about? I'm a
14 presidential candidate. I can't be killing candidates.

15 He was discussing it. Even if he wasn't -- and the
16 government, again, doesn't quarrel with the idea that he didn't
17 come up with it, we also don't quarrel --

18 THE COURT: So what about one of the strongest
19 indications of your position is the place on page 5 of
20 Government Exhibit 1 where CS2 says: No, it's not going to be
21 like that. The strategy is not like that. How much time do
22 you think we have before we can hit that bitch?

23 And Mr. Estrada says: Now.

24 And then Mr. Gonzalez says: Because right now would
25 be ideal.

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1 Now, defense counsel says that Mr. Estrada's comment
2 "now" is not with reference to the suggestion that they hit
3 that bitch, which I think can be fairly interpreted as a
4 suggestion that they kill Thelma; but, rather, is just
5 responsive to other conversations that are going on around the
6 same time.

7 But I wonder if that's a fair interpretation, because
8 Mr. Gonzalez follows up Mr. Estrada's comment of "now" with the
9 statement, Because right now would be ideal.

10 So at least Mr. Gonzalez seems to understand that
11 Mr. Estrada is saying that something has to be done right now.
12 And it looks like the only thing that's being proposed is to
13 "hit that bitch." But I don't know if you wanted to comment on
14 that or not.

15 MR. RICHMAN: Your Honor, I certainly agree with that
16 interpretation. And I think, even continuing on in the
17 conversation, it makes sense; because then the CS's next
18 comment is, Well, that's fine. We need the names of those two
19 bastards right away so I can start looking, which would be a
20 natural response to someone saying they want something done
21 now. And importantly, then the defendant himself starts to
22 provide -- and does provide -- the two names of the other two
23 targets. I think that your Honor's reading is absolutely fair.

24 THE COURT: All right. Let's go back to defense
25 counsel. And now I want to hear -- obviously I've read your

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1 papers, but let me hear anything you wanted to say about your
2 bail application.

3 MR. FEITEL: Thank you, your Honor.

4 I will try to be brief; although I'm sure your Honor
5 has experienced when lawyers say that, they ramble on all day
6 long.

7 THE COURT: This is what hourly billing is all about.

8 MR. FEITEL: Mr. Estrada, I think, has a profile
9 that's different from a lot of the people that appear in cases
10 like this. I am not at all trying to minimize the significance
11 of this case. That would be a fool's errand, and I fear your
12 Honor would stop listening to me.

13 These are serious charges against him. I think there
14 are some complications, particularly with respect to the gun
15 charge about him, because I don't think he's involved in any of
16 that. And there are some limits to the scope of conspiratorial
17 liability, even though prosecutors never say that there aren't.
18 And I do think that Mr. Estrada has a history of public
19 service. He has no prior involvement in the criminal law.

20 Yes, he committed some mistakes; he committed some
21 serious errors. But there will, I think, ultimately be some
22 consequences to them. But the question is whether or not this
23 Court can fashion conditions that will assure his return and
24 will provide for the safety of the community.

25 As to his return, I believe that we have provided --

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1 we don't have a Jerry Epstein situation, where my client can
2 offer to hire private security guards to watch him 24 hours a
3 day. I've done the best that I can. I found a place for him
4 to live with someone who's willing to come to court and say
5 that he'll be his custodian. I found a property with a serious
6 value, I think it's \$500,000 in unencumbered value.

7 Mr. Estrada would also sign a plea of promise to pay a \$5
8 million fine if he were to flee. He's willing to wear a GPS;
9 he's willing to stay at home, limit his geography and his
10 movements.

11 So the government has his passport. So I think it's a
12 fair question to ask, How could he flee? Where would he go?
13 And more importantly, I think that most people act in their
14 self-interest. Not always. People do things that are contrary
15 to self-interest, which is why we have a criminal justice
16 system obviously in this country.

17 But if Mr. Estrada was to be able to somehow flee,
18 that is, cut off his GPS bracelet, find a way to get out of
19 this country, even though he has no passport, you'd have to
20 ask, where would he go? The government says he has lots of
21 contacts in Guatemala. Let's just assume that that's true.
22 There is an extradition treaty. I have clients who are
23 Guatemala nationals who have been extradited to the United
24 States. I've been to the extradition prisons in Guatemala.

25 How would that further Mr. Estrada's interests? It

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1 would make his situation enormously worse. And I think that
2 given the guaranties that we try to put into place, there's
3 really virtually no chance.

4 I've also agreed on his behalf that he won't have
5 access to a computer, to a phone, to a tablet, or other
6 electronic information to avoid there being any sense that he
7 would have the ability to leave. I have agreed that if I need
8 to meet him, I'll come to New York. I was born in this city.
9 Many years ago. I'll come back home, I'll see my family, and
10 I'll visit with Mr. Estrada and prepare for the trial or the
11 resolution of this case.

12 So I think as to the kind of guaranties, we, I think,
13 have a significant package in place to guarantee his return;
14 and I think his motivation to flee is very, very minimal.

15 The law doesn't require that we can guarantee to 100
16 percent that he won't flee; that would be impossible for me to
17 ever convince anybody. I wouldn't even know how to say that,
18 because you never can tell what someone else is going to do.

19 If I thought that Mr. Estrada was the kind of devious
20 person who would flee after I got him bond, thus ending my
21 ability to ever speak to any other prosecutor in the Southern
22 District of New York, no one would ever have anything to talk
23 to me about ever again. They might, but it might not be a
24 pleasant conversation.

25 I wouldn't have suggested this. I just think given

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1 his nature and his history, he's the father of four children,
2 he did live a life of public service, I think it enormously
3 unlikely that he will flee. I don't think that he will flee,
4 and I don't think the government has sufficiently satisfied its
5 burden.

6 With respect to the issue of dangerousness, let's just
7 assume that there are these -- these conversations exist. I've
8 tried to proffer what I think is the response to them. The
9 appropriate response was that he didn't want anything to do
10 with this.

11 But I think the question is does he provide or present
12 a danger to the community. I'm not sure which community the
13 government wants to talk about, because there is the community
14 here in the United States, and there is also the community back
15 in Guatemala.

16 As to the United States, the government's position is
17 my client doesn't know anybody here. And I'm not giving him
18 the opportunity to get on the phone and call anyone, to have
19 anyone come and meet him, if your Honor would accept the
20 conditions of confinement. So it's hard to see how he could
21 reasonably be able to find a way to become a danger to the
22 United States.

23 And in that regard, the conduct that he's alleged to
24 have committed that was dangerous was in Guatemala, not here in
25 the United States. The converse is that if the danger is in

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1 Guatemala, then there is no danger to the community here in the
2 United States, which is where he's going to be living at the
3 time while this case is pending along.

4 So I don't ask of this lightly. I don't minimize the
5 charges against my client. I don't minimize the government's
6 evidence against him either. That would be foolhardy.

7 But I just think that in this case there is reason to
8 trust Mr. Estrada; I think there's reason to believe that the
9 conditions we've offered are sufficient to reasonably assure
10 his appearance to return to court, and that he won't be a
11 danger to the community.

12 I'd be glad to try and respond to any other questions
13 your Honor has. That's just, sort of, a brief summary of how
14 this plays out in my mind for my client.

15 THE COURT: All right. Thank you. That's very
16 helpful. Let me hear from the government.

17 MR. RICHMAN: Thank you, Judge.

18 Your Honor, at the outset, I would just briefly note
19 that pretrial recommends detention, both as to flight risk and
20 as to dangerousness.

21 THE INTERPRETER: Excuse me. Can you repeat that?

22 MR. RICHMAN: Sure.

23 At the outset, your Honor, I would briefly note that
24 pretrial recommends detention, both as a flight risk and as to
25 dangerousness.

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1 Judge, I think what this comes down to is the
2 defendant is asking you to trust him, as any defendant who's on
3 pretrial release does. And he's asking you to trust that he
4 will return to work to face very serious charges, return to
5 court to face charges that have a ten-year mandatory minimum in
6 which -- and I know how the Court feels about the guidelines,
7 but in which the defendant's guidelines range, if convicted,
8 will be life; in which the defendant faces a very strong case,
9 as recounted in the complaint; and in which the defendant is in
10 a community in which he has very limited ties.

11 THE COURT: So I assume that he has a strong motive to
12 flee. The question is whether there are conditions sufficient
13 to reasonably prevent that.

14 MR. RICHMAN: Agreed, your Honor. I'm glad the Court
15 acknowledges the motive to flee.

16 The government submits that there are not conditions
17 in this case, certainly not this package proposed.

18 And I think the heart of it, Judge, is this is a
19 defendant who was in this conduct willing to sell out his
20 entire country. That is what this defendant was trying to do.
21 He was negotiating with individuals whom he believed were
22 representatives of one of the largest international drug
23 cartels in the world. He wanted to negotiate with them for
24 payments to his campaign, in exchange for *carte blanche* access
25 to his country.

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1 And now the defendant is saying, Judge, you can trust
2 me. I'm going to stay here in this country I don't
3 really know, and I'm going to face these very serious charges
4 in your Honor's court. And at its most basic, the defendant's
5 conduct belies any notion that he can be trusted to do that.

6 In addition, your Honor, the defendant along the way
7 evidenced that he does have a criminal mindset, and evidenced
8 that he is someone who will take extreme measures to evade law
9 enforcement and also to further his own ends. And what I mean
10 by that, in addition to, again, the heart of the conduct, which
11 was egregious, the defendant also engaged in conversations in
12 which he discussed the laundering of bulk cash proceeds,
13 cocaine proceeds, from New York and elsewhere in the United
14 States, to Guatemala. And this is the money that the defendant
15 wanted to fund his campaign.

16 And in doing so, in one conversation, the defendant
17 actually says to the CSs, Why don't we use this yacht that
18 we're meeting on right now, because you told me there's a
19 secret room in the yacht, and we can hide bulk cash in this
20 room. It will be flying an American flag. You can get down
21 into the Caribbean, you can get down to Guatemala, and we can
22 move the cash that way.

23 The defendant also engaged -- and so did his
24 codefendant -- with other individuals, some of whom are still
25 under investigation, about laundering money, again, bulk

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1 cocaine and narcotics proceeds, from the United States down to
2 Guatemala. He clearly had a criminal mindset throughout the
3 investigation, and he's not someone who can be trusted to be
4 out pending trial in this case.

5 THE COURT: All right.

6 MR. RICHMAN: Thank you, Judge.

7 THE COURT: Let me hear in rebuttal anything further
8 the defense counsel wants to raise.

9 MR. FEITEL: Thank you.

10 Your Honor, I've heard your Honor's comment that you
11 think he has motive to flee. I'm not going to quarrel with
12 your Honor's conclusion, although I think otherwise.

13 So the question then is what conditions can we impose
14 that will reasonably assure his return to court. I had
15 previously said let's let him out of the house a couple of
16 hours a day. I'd be glad to have him under home confinement 24
17 hours a day.

18 The house where he'd be living in is in Spring Valley.
19 I was born in Queens. We didn't travel outside of the city
20 very much in my youth, but I think Spring Valley is pretty far
21 away from any of the local airports or any of the other modes
22 of transportation. And given that he doesn't have a passport,
23 I think it does beg the question, How actually does someone
24 think he would flee?

25 THE COURT: I have had cases, they are admittedly

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1 rare, but they are not zero, cases before this very judge, let
2 alone before other judges, where defendants who had a strong
3 motive to flee, but were at a known location with an electronic
4 bracelet and so forth, nevertheless, were able to flee.

5 The first thing they did was make arrangements with
6 others to transport them often by boat. The next thing they
7 did was to cut the bracelet. And although the electronics are
8 better now than they once were, because not only electronic
9 limitations, but also manpower limitations and monitoring it,
10 there is often a delay of at least a few hours between the time
11 the bracelet is cut and someone focuses on the fact that it is
12 cut.

13 So I appreciate that your client can only do so much
14 in his circumstances. It's not that -- the one case I had --
15 you mentioned Mr. Epstein. I had a case involving a lawyer
16 named Marc Dreier who convinced me to allow him -- even though
17 he did not, in my view, have quite as strong a motive to flee
18 as I think your client does, he convinced me that he would stay
19 in his apartment 100 percent of the time and not only wear a
20 bracelet, but would, at his expense, employ armed guards. And
21 I approve that only after it was agreed by all concerned,
22 including the government and the FBI and the marshals, that the
23 guards would be specially authorized to shoot if he left the
24 apartment, even for one second.

25 So I can conceive of situations where the motive to

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1 flee can be overcome, and I think there's something to your
2 argument that the constitutional bail requirement would become
3 a nullity if one were to insist on something like what
4 Mr. Dreier had to produce in order to get released in his case.
5 But I don't see why you think that someone in Mr. Estrada's
6 situation, if he were of a mind to do so, couldn't flee. I
7 don't want to go through the details of the each of the cases
8 where it's happened, but it's happened. So I'm not just
9 speculating; I've had it happen in my court.

10 But let me hear from you on that.

11 MR. FEITEL: I understand that a person with your
12 Honor's experience can always postulate or think back into the
13 history of the courthouse cases to find an extreme example of
14 somebody who violated the rules. One question I have is with
15 what results. I'm not familiar with Mr. Dreier. I stopped
16 living in New York after I graduated from law school. So if he
17 ultimately got caught and was brought back here --

18 THE COURT: Because of the conditions, he remained in
19 his apartment, he was sentenced to 20 years in prison, and he
20 is still in prison. I was just referencing that because of
21 your fair point that you couldn't provide an Epstein-like or,
22 in my case, Dreier-like kind of guarantee because the funds
23 aren't there.

24 But in the cases where someone did successfully run,
25 one case the person is still at large, two cases the persons

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1 were eventually extradited from other countries, but in one
2 case it was, if I remember, correctly, four years later, and
3 the other about five years later. So it was not an immediate
4 kind of thing. But every case is different and it has to be
5 assessed on its own terms. I really just want to suggest that
6 your argument that how is he going to flee is, I think,
7 inferentially contradicted by what happened in other cases.

8 MR. FEITEL: In brief response, first, in order for
9 someone to flee under the conditions that we have proposed, it
10 would require that Mr. Estrada's custodian become a
11 co-conspirator with him, right. Because if Mr. Estrada doesn't
12 have access to phones or tablets or Internet or anything else,
13 it would require some way, I think, for him to communicate or
14 someone to communicate on his behalf. That, I think, is an
15 assumption that's a little harder to accept. It would require
16 someone else to be willing to risk not merely their house or
17 their other interests that are financial, but their liberty
18 interest to make sure that Mr. Estrada got away.

19 The other point your Honor makes, which is that the
20 people came back, I worked as a prosecutor for more than two
21 decades, if someone fled in my case and they came back, I don't
22 believe that there would have been a favorable resolution of
23 the case. I believe it would have been the end of any
24 opportunity that defendant ever had to get even a day off of
25 their sentence.

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1 And so it would require -- when your Honor says that
2 you can always postulate someone fleeing, but the circumstances
3 here would require him to have some confederate to do so; and
4 it would make the endgame substantially worse than it is now.

5 THE COURT: Well, but when one flees, one flees on the
6 assumption one is not going to get caught. Under your
7 argument, no one would ever flee simply because they would know
8 that if they got caught, it would be worse for them. That's
9 not, I think, a fair statement of the mindset of the people who
10 do decide to flee.

11 But let me ask you a different point. What about
12 danger to the community? I think the thrust of the
13 government's argument with respect to the tapes is that your
14 client did agree for a limited period of time to the killing of
15 one or more rivals or their associates, that he then thought
16 better of it. But that was an agreement that he gave, even if
17 briefly, when he was not facing what he's facing now, which is
18 people who are going to be testifying against him in a very
19 serious criminal case in which he is the codefendant.

20 So if he were the sort of person who would
21 contemplate -- even if only briefly -- agreeing to the
22 immediate assassination of a political rival and perhaps her
23 two associates, why shouldn't I draw the inference that he
24 would agree and even seek to engineer the killing of the people
25 who would be testifying against him?

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1 MR. FEITEL: I'm going to follow with your Honor's
2 assumption that there was a brief period of time in which he
3 agreed to this and then changed his mind.

4 THE COURT: No, I know you take a different view.

5 MR. FEITEL: And also your Honor understands that in
6 my interpretation, the government informants keep coming at
7 him; he does a second time say, I don't want to do that.

8 So if the community that is at risk in this case is
9 the community of witnesses against him that your Honor
10 identified, then I think there's no reasonable possibility that
11 Mr. Estrada could do anybody any harm.

12 This is a case in which the overwhelming majority of
13 the evidence consists of the tapes and the transcripts that
14 were made against him. I'm not sure that they are
15 self-authenticating, but the people who would authenticate them
16 would be government informants whose identities are protected
17 and unknown and might be able to testify under an anonymous
18 name.

19 But I think if your Honor has identified that the
20 heart of the danger in this case is those people who are
21 witnesses, then I think it is much more certain than not as in
22 a general -- like in a general case, if you commit a robbery
23 and you think that the witnesses are your next-door neighbor or
24 we saw you digging a hole and the like, that's a little
25 different. These are people who are protected and who are

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1 professional. So I think that the risk in that sense, even
2 under your Honor's hypothetical, is extraordinarily low in this
3 case.

4 THE COURT: Let me go back to the government.

5 So with respect to the danger to the community prong,
6 I think defense counsel is raising a fair point. Who's in
7 danger?

8 MR. RICHMAN: Thank you, Judge.

9 I think there's multiple answers to that, your Honor.

10 The first one I know defense counsel just referenced
11 that confidential sources made the recordings and they are at
12 the heart of the case, and that's true. And for the reasons
13 that there are some safety concerns, I don't want to get into
14 too much detail about who those confidential sources are. The
15 defendant certainly knows who they are, because he met with
16 them repeatedly. They are individuals who are out in the
17 community, and we do believe potentially would be at risk.

18 We also think, your Honor, that in the heartland of
19 the defendant's conduct, which was an attempt -- albeit with
20 confidential sources -- to import tons of cocaine into the
21 United States, speaks to the fact that the defendant -- and
22 this is not the heart of our argument, but the defendant had
23 connections to other criminals; he talked about those
24 connections in certain recordings; he himself brought up the
25 name of a different cartel and a different drug dealer. This

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1 is not an isolated incident. And he also had individuals who
2 were co-conspirators during the course of the case who are
3 still being investigated, who were involved in money laundering
4 and other activity.

5 So the defendant does pose a risk of harm both to this
6 community, if released, and certainly back to his home
7 community of Guatemala. And, of course, I recognize that both
8 can suffice to establish the community that's placed at risk.

9 THE COURT: All right. Is there anything else either
10 counsel wanted to say on any issue before I rule?

11 MR. RICHMAN: Not from the government, Judge.

12 Thank you.

13 MR. FEITEL: No, sir. Thank you, your Honor.

14 THE COURT: First, I want to commend both counsel --
15 and especially defense counsel -- what I thought was excellent
16 argument. It makes me look forward very much to the further
17 proceedings in this case, knowing, as I now know, what high
18 level of advocacy will be provided.

19 This is a presumption case. But I'm going to assume
20 that enough has been brought forward that the burden shifts
21 back to the government. So it's the government's burden to
22 prove by clear and convincing evidence either or both prongs of
23 the basis for detention.

24 In the end, I'm not going to rule on the danger to the
25 community. I think that I'm very troubled by the tapes. And

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1 notwithstanding defense counsel's eloquence, I think the more
2 likely interpretation is that the defendant did agree -- albeit
3 briefly -- to the assassination of a political rival and
4 perhaps of her two associates as well.

5 However, I think in terms of who he would be a danger
6 to now, some of the witnesses are protected, others are persons
7 that it seems unlikely the defendant would easily have access
8 to, even through an intermediary. So I think it's a close
9 question and one that if I were to resolve, I might need much
10 more specific information about.

11 But I'm not going to reach it because I do conclude
12 that the government has sustained its burden with respect to
13 flight. Where perhaps I most strongly disagree with defense
14 counsel is in his suggestion that this defendant doesn't have
15 or only has a very modest motive to flee.

16 I think quite the contrary.

17 Here he is facing a mandatory minimum of ten years, a
18 possibility of life imprisonment. All his meaningful ties are
19 with Guatemala or other places outside the United States. And
20 his profile does remind me, frankly, of the few other cases
21 I've had where someone has fled, which is someone, all of whose
22 meaningful ties are outside and all of whose connections are
23 outside and who is facing strong evidence of very serious
24 charges.

25 I'd note in that regard that while we only briefly

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1 discussed the evidence, the fact that most of the evidence is
2 recorded suggests that this is a strong case.

3 The bail package proposed, while not ideal, is, I
4 think, as defense counsel fairly says, as good a bail package
5 as one could expect from someone in Mr. Estrada's situation.
6 And that has weighed with the Court.

7 But the simple fact is, that for reasons that I've
8 already elaborated on, the limitations of the electronic
9 bracelet, the ability of people, even without a passport, to
10 flee the country and so forth, and the very strong motive to
11 flee that this defendant has, I think the government has shown
12 by clear and convincing evidence that no conditions of
13 release -- no reasonable conditions of release will assure this
14 defendant's return. And so I will deny the motion for release
15 on that basis, and the defendant will remain detained.

16 Now, we have a conference coming up on July 29th.
17 And, of course, we'll have the codefendant's counsel present at
18 that time as well.

19 I wanted to flag though for defense counsel, who is
20 present, and for the government, that particularly when
21 defendants are detained, I think the Speedy Trial Act applies
22 with particular strength. So we're going to be setting a trial
23 date at the time of the July 29th conference, not today. But I
24 wanted to flag that I think we're looking at a trial maybe in
25 September or October, not in January or February or anything

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1 like that, at least that's my initial inclination, subject, of
2 course, to hearing from counsel on July 29th.

3 All right. Anything else we need to take up at this
4 time?

5 MR. RICHMAN: No, thank you, your Honor.

6 MR. FEITEL: No, thank you, your Honor.

7 THE COURT: Thanks a lot.

8 * * *